

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

FRED & MARILYNNE BERGMAN,)	
)	
Appellant,)	Case No 06R-667
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE LANCASTER
LANCASTER COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Fred & Marilynne Bergman ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on January 16, 2008, pursuant to an Order for Hearing and Notice of Hearing issued November 14, 2007. Commissioners Warnes, Salmon, and Hotz were present. Commissioner Warnes presided at the hearing. Commissioner Wickersham was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code ch.4 §11 (10/07).

Fred and Marilynne Bergman were present at the hearing. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew, a Deputy County Attorney for Lancaster County, Nebraska, appeared as legal counsel for the Lancaster County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on

the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2006.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2006.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains is described in the table below ("the subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2006, ("the assessment date") by the Lancaster County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

Description: BICENTENNIAL ESTATES 1ST ADDITION, BLOCK 6, LOT 42, Lancaster County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$Included in Total	\$Included in Total	\$Included in Total
Improvement	\$Included in Total	\$Included in Total	\$Included in Total
Total	\$154,206.00	\$137,500.00	\$154,206.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Order for Hearing and Notice of Hearing issued on November 14, 2007, set a hearing of the appeal for January 16, 2008, at 1:00 p.m. CST.
7. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. The hearing was held before a panel of the Commission. 442 Neb. Admin. Code, ch 4 §11.01 (10/07).

9. Actual value of the subject property as of the assessment date for the tax year 2006 is:

Land value	\$Included in Total
Improvement value	<u>\$Included in Total</u>
Total value	<u>\$154,206.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. 2007 Neb. Laws, LB 167 §6.
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).
3. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

4. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
5. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
6. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
7. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
8. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” Neb. Const. art. VIII, §1.
9. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
10. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

11. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
12. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
13. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).
14. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
15. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

16. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
17. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
18. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
19. Once the presumption of correctness has been rebutted by the Taxpayer, the Taxpayer must then prove that the decision of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006),
20. Proof that the action of the County Board was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).

21. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
22. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
23. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
24. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
25. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
26. Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981).

IV. ANALYSIS

This appeal is for 2006 and includes the issues of both valuation, that the actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board, and equalization, that the taxable value of the subject property as of January 1, 2006, is not equalized with the taxable value of other real property.

The subject property is a residential lot on which a 1,237 square foot one story house was added in 1988. Exhibit 6:21. The house is rated as average quality and a condition rating of Average. Exhibit 6:21

The Taxpayer testified that two nearby houses have sold recently and are evidence of her concern that their house was neither properly valued for taxable assessment nor equalized with these allegedly comparable properties for 2006. The two properties are 4810 Bunker Hill Road, across the street to the north, and 4815 Bunker Hill Road, next door to the west. A map showing the location of the subject property is found as Exhibit 7:1.

A summary of the concerns testified to by the Taxpayer is found on Exhibit 6:30. Additional concerns are shown on Exhibits 6:66 and 6:67.

The Taxpayer testified that the two properties referred to above were alleged to be comparable. The property record cards for the two properties are found at Exhibits 6:38 to 6:41, for 4815 Bunker Hill Road, and Exhibits 6:43 to 6:46 for 4810 Bunker Hill Road. The property record card for the subject property is found at Exhibit 6:20 to 6:21. The following table itemizes the physical attributes of these two properties and the subject property.

	Subject	4815 Bunker Hill Road	4810 Bunker Hill Road
Year	1988	1986	1993
Type	One Story	Multi Level	Multi Level
Living Area	1,237	1,308	1,246
Construction	Average	Average	Average
Condition	Average	Average	Average
Basement Area	1,221	420	598
Fin Basement	600	200	500
Fireplaces	0	1	0
Plumbing Fix	8	7	11
Land Value	\$54,000	\$54,000	\$45,000
Sales and Market Valuation			
Sale Date		04/07/06	12/02/03
Sale Price		\$154,500	\$139,000

From the above chart, the Commission notes differences between the subject property and the alleged comparables. Most notably, the style/type of houses differ between the subject property and the alleged comparables.

Secondly, one of the alleged comparables sold after the date of valuation by the County, January 1, 2006. The Commission can give probative value to this sale. *H/K Company v Board of Equalization*, 175 Neb 268, 121 N.W. 2d, 382 (1963). The Commission does not give great weight to this sale since no evidence was provided as to the nature or terms of the sale.

The Taxpayer gave her opinion of fair market value of the subject property as of January 1, 2006, as \$137,500.

The Taxpayer provides additional concerns in writing in Exhibit 6:66 and 6:67. She alleges that the County was required to adjust valuations by virtue of an order from this Commission. The Commission informed the Taxpayer during the hearing that Exhibits 6:69 to 6:77 were preliminary reports to the Commission and that the Commission's review of its own records for Statewide Equalization of Lancaster County for 2006 did not reveal an order for adjustment. No property record files were provided by the Taxpayer in support of other allegations in this second written itemization of concerns.

The Commission finds that the Taxpayer's alleged comparable parcels are not comparable and accordingly, the sales histories of these parcels are not competent evidence to rebut the presumption that the County Board was correct nor is it clear and convincing evidence that the Board was arbitrary or unreasonable in their decision both as to valuation or equalization. The Commission finds that the decision of the County Board of Equalization should be affirmed.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not rebutted the presumption in favor of the County Board of Equalization by competent evidence.
4. The Taxpayer has not adduced clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2006, is affirmed.
2. Actual value of the subject property for the tax year 2006 is:

Land value	\$Included in Total
Improvement value	<u>\$Included in Total</u>
Total value	<u><u>\$154,206.00.</u></u>
3. This decision, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2006.
7. This order is effective for purposes of appeal on February 7, 2008.

Signed and Sealed. February 7, 2008.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.